

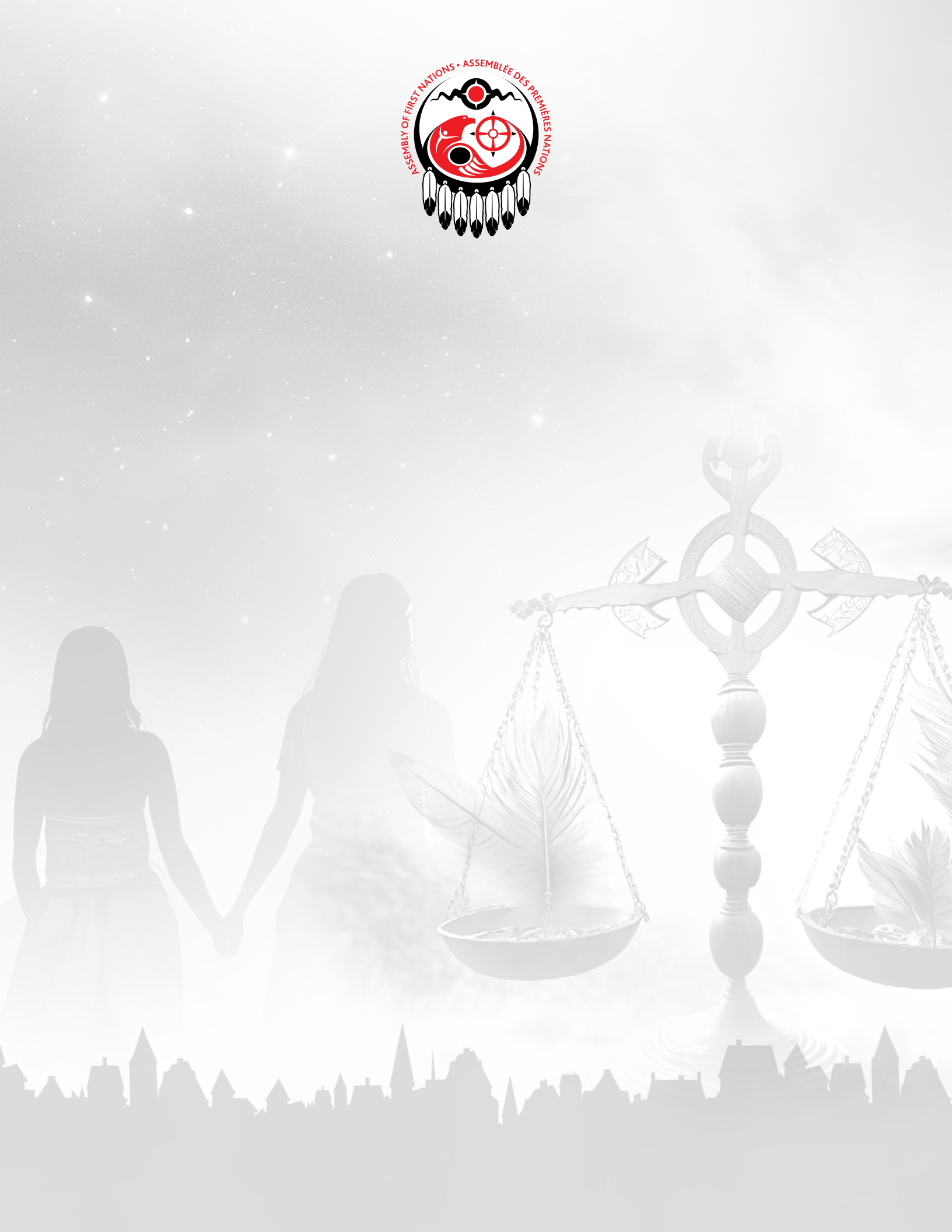


Assembly of First Nations

National First Nations Justice Strategy



June 11, 2025



National First Nations Justice Strategy

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Statement from the National Chief

First Nations continue to demonstrate resilience in advancing self-determination and recognition of their inherent, Treaty, and constitutional rights. Generations of First Nations peoples have been subject to colonial policies meant to assimilate them into mainstream Canadian society. Initially, this included the *Indian Act* with the illegal pass system, the ban on ceremonies, and eventually the mandatory attendance of First Nations children in Canada's Indian Residential School system. Indian Residential Schools were replaced with the Canadian child welfare system, which carried out the 60's Scoop, and in which First Nations children are significantly overrepresented.

The intergenerational trauma that First Nations people carry from acts of genocide, coupled with dire socio-economic realities, creates an environment in which First Nations people are overrepresented in the criminal justice system. This reality is compounded by systemic racism and unconscious bias in policing, correctional institutions, and throughout parole processes. The report *Ten Years Since Spirit Matters* was developed by the Correctional Investigator of Canada and released in November 2023. The report highlights that Indigenous people account for 5% of the adult population in Canada yet represent nearly one-third of the federally incarcerated population, while 50% of all women behind bars are Indigenous. These alarming statistics call attention to the lack of progress in improving outcomes with federal sentences for First Nations people, and the need to put resources and control in the hands of First Nations to see significant change.

Broken systems that have been designed to erase and diminish First Nations people must be transformed. This AFN National First Nations Justice Strategy is the culmination of years of engagement with First Nations to find a way forward. Through engagement, First Nations identified two clear pathways to bring change to the criminal justice system. Path One consists of revitalizing First Nations laws and legal systems and Path Two focuses on reforming the Canadian criminal justice system.

A key element of criminal justice reform is continued work to implement the National Inquiry into Missing and Murdered Indigenous Women and Girls' 231 Calls for Justice¹ and the Truth and Reconciliation Commission Calls to Action. Many of the Calls are focused on addressing problems in policing, corrections, and systemic racism in the legal system. Political will is essential to the collaborative implementation of the AFN National First Nations Justice Strategy. We call on all governments to commit to making transformative change together.

*National Chief Cindy Woodhouse Nepinak,
Assembly of First Nations*

¹ Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, Calls for Justice, online: https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Calls_for_Justice.pdf

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Summary of Key Terms

Canadian justice system. The western colonial judicial framework that includes laws, policing courts, and corrections.

Crown Counsel & Prosecutors. The Crown represents the Canadian government. Crown prosecutors are responsible for prosecuting criminal cases.

Gender Based Analysis Plus (GBA+). An analytical tool and framework used to assess the experiences of gender and identity diverse groups in policies, programs, and initiatives.

Gladue Report. A pre-sentencing report for convicted Indigenous individuals that makes recommendations to a judge about their sentence. They consider the systemic, colonial, and unique background factors that may have influenced an Indigenous person to interact with the Canadian justice system.

Gladue Factors & Principles. An Indigenous person's circumstances that relate to or include challenges caused by colonization. Examples include: loss of language, racism, someone affected by the Sixties Scoop, experiences of poverty, and involvement in a foster home or child protection system.

Indigenous Court Worker Program. A program aimed to help Indigenous people involved with the criminal justice system to obtain fair, just, equitable, and culturally relevant support. This includes legal counsel, communication and cultural barriers, and knowledge on justice system procedures.

Indigenous Data Sovereignty. The act of Indigenous people, communities, and Nations to have authority over and participate in data that is created with, by, for, or about them.

Indigenous Liaison Officer. An individual whose role is to interpret and communicate the treatment needs and progress of a convicted Indigenous individual, as well as their behavior, to the case management team for inclusion in correctional planning and promotion of safe release.

Indigenous Community Justice Centre. Centres aimed to provide culturally appropriate information, advice, support, and representation directly to Indigenous people at the community level. Currently these Centres are only located in British Columbia.

Intersectionality. The cumulative effects of multiple different forms of discrimination that overlap and affect the daily lives of individuals, especially women of colour.

Modern Treaty. Treaties that have been made between Indigenous people and Canada since 1973. There are currently 26 signed and negotiated modern treaties.

Ombudsperson. A confidential, impartial, and independent conflict management professional who works to resolve complaints with a federal government organization. Each ombudsperson has a different mandate.



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Recidivism. The act of committing an offence or coming into conflict with the Canadian criminal justice system after having already done so in the past.

Restorative Justice. A justice approach that emphasizes addressing harm caused by an offence through providing opportunities for open dialogue between a victim or survivor, the offender, and the community to meet the needs of those involved.

S. 81 and s. 84 Agreements. Found within the Corrections and Conditional Release Act (CCRA), s. 81 and s. 84 relate to the care, custody, and release of Indigenous offenders. Specifically, s. 81 pertains to Healing Lodges, and s. 84 outlines an Indigenous offender's supervised release into their community.

Healing Lodges. Lodges intended to be a decolonial alternative away from a penitentiary environment for Indigenous offenders can feel safe and closer to their communities. There are 10 in Canada, 4 run in collaboration with Indigenous communities, and 6 federally run by Correctional Services Canada.

Self-determination. The ability to freely determine political status and free pursuit of economic, social, and cultural development.

Social Determinants of Justice. Social factors, such as income, education, and housing, that can lead to an increased likelihood to interact with the Canadian justice system as well as discrimination and exclusion.

Status Indian. The legal standing of a person who is registered under the Indian Act.

Trauma-informed Victim Services. A holistic approach to victim services that recognize the connections between violence, trauma, and negative health outcomes and behaviors.

Wraparound Supports. A comprehensive, holistic approach to address the needs of youth, family, and individual complex needs.

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Introduction

Background

In 2021, following the release of the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG) Final Report, the Minister of Justice and Attorney General of Canada was mandated to develop an Indigenous Justice Strategy (IJS) to address systemic discrimination and the overrepresentation of Indigenous people in the criminal justice system.² On November 1, 2022, the Government of Canada announced its commitment to developing, in consultation and collaboration with Indigenous Peoples, provinces, and territories, an IJS that is informed by the lived experiences of First Nations, Inuit, and Métis.³

Beginning in 2021, First Nations-in-Assembly mandated the Assembly of First Nations (AFN) to carry out extensive national engagement with First Nations, and to co-develop with the Department of Justice distinctions-based elements of the IJS. The Department of Justice all carried out engagement with thirty-eight (38) First Nations, Métis, Inuit organizations and associated advocacy groups.

In January 2024 the AFN submitted an interim report to the Department of Justice, *Recommendations for a First Nations Justice Strategy*, highlighting three years of engagement with First Nations, including two National AFN Forums and a National Virtual Justice Speaker Series, and advancing recommendations to inform the IJS.

While co-development efforts were largely positive and constructive, the federal objective for the IJS was to create a high-level evergreen strategic document “setting out a vision and priority areas for work going forward”. However, First Nations were clear through AFN engagement they expected targeted, actionable, and focused measures and priorities to implement the strategy. To this end, the AFN was mandated to develop this First Nations Justice Strategy (FNJS). This FNJS can be read alongside the IJS or stand alone. It includes many of the specific recommendations identified through AFN engagement.

We call upon all governments to immediately implement the recommendations in relation to the Canadian justice system in: Bridging the Cultural Divide: A Report on Aboriginal People and the Criminal Justice in Canada, Royal Commission on Aboriginal Peoples (1996)

National Inquiry into Missing and Murdered Indigenous Women and Girls, Calls for Justice (2019), Call for Justice for All Governments: Justice 5.1

2 Minister of Justice and Attorney General of Canada Mandate Letter (2021), <https://www.pm.gc.ca/en/mandate-letters/2021/12/16/minister-justice-and-attorney-general-canada-mandate-letter>

3 Engaging with Indigenous partners to address systemic discrimination and overrepresentation in the Canadian justice system (2022): <https://www.canada.ca/en/departement-justice/news/2022/10/engaging-with-indigenous-partners-to-address-systemic-discrimination-and-overrepresentation-in-the-canadian-justice-system.html>



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On March 10, 2025, the Minister of Justice announced the release of the IJS to address systemic discrimination and overrepresentation in the Canadian criminal justice system. The AFN supports the release of the IJS and acknowledges the years of advocacy and effort that went into its development.

The AFN FNJS is designed to support First Nations in addressing the crisis level of overrepresentation of First Nations people in correctional institutions, improve the experiences of those involved with the criminal justice system, and support First Nations to restore their laws and legal systems. Like the IJS, the FNJS is an evergreen document that will be adjusted over time. Evaluation mechanisms have been designed to ensure regular oversight and accountability checkpoints which can be used to measure whether the strategy is meeting its intended objectives and to allow adjustments if it is not.

Building off Success

In developing the FNJS, the AFN was mandated to draw from existing work being led by First Nations across the country to transform the justice system, including the BC First Nations Justice Strategy.⁴ The AFN thanks all First Nations, individuals, and organizations who participated in AFN engagement throughout this process, including the AFN's National Forums on Justice in 2021 and 2022, and the Virtual Justice Speaker Series in 2023. Special acknowledgement goes to the British Columbia First Nations Justice Council (BCFNJC) who provided valuable experience and technical guidance throughout the development of the FNJS.

Inherent Right to Governance

First Nations have an inherent right to self-determination and self-government recognized and affirmed by S. 35 of Canada's Constitution and by the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP).



The administration of justice mechanisms included in the FNJS are fundamental reflections recognizing that each First Nation has its own rights to inherent self-determination and self-government. The FNJS is designed to foster knowledge exchange and capacity-building to respond to the many unique stages of readiness First Nations are in when it comes to revitalizing their laws and legal traditions.

Special consideration is required under the FNJS to address the needs and interests of First Nations with historic and Modern Treaties. For First Nations who have entered into historic or Modern Treaties, these are foundational documents that determine their Nation-to-Nation

⁴ AFN Resolution 36/2021, *Call for Recommitment, Funding and Clear Timeline for the Development and Implementation of a National First Nations Justice Strategy*

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relationship with the Crown. Continued engagement with both historic and Modern Treaty Nations is required to collaboratively develop and implement strategies to support societal and community practices.

Seeking Input from All

The development of the FNJS has been informed by national engagement with First Nations and their representative bodies across Turtle Island to ensure the strategy captures diverse perspectives. The FNJS considers the unique challenges and experiences of Elders, youth, women, girls, 2SLGBTQIA+⁵ people, men, and boys, when interacting with the Canadian criminal justice system. It recognizes the importance and need for First Nations justice services to be available and accessible to all First Nations people. It is responsive to First Nations citizens living in rural and urban areas, on- and off-reserve, on historical First Nations lands and Treaty areas, and in remote or Northern communities.



Revitalizing First Nations legal systems and laws, and reforming the criminal justice system, requires the involvement of Elders and Knowledge Keepers across Turtle Island. The invaluable insight and leadership provided by First Nations Elders and Knowledge Keepers forms the foundation for the FNJS.

Support and Expansion of Existing Programs

The FNJS calls for an expansion of existing culturally appropriate criminal justice programs that support healing, rehabilitation, and wellness. These programs and services include diversion, Gladue report writing, reintegration and aftercare support, Indigenous Community Justice Centres, Indigenous Court Worker programs, Healing Lodges, and trauma-informed victims services and supports for Survivors and families. Additionally, the FNJS recommends programs and centres, compassionate approaches, and healing alternatives for youth in contact with the Canadian criminal justice system based on the input given by First Nations young people. To ensure continued effectiveness, adequate, long-term, and reliable funding is required to support these programs and services and allow for needed expansion.

The FNJS prioritizes cultural and trauma-informed training for all justice personnel to address systemic discrimination within the colonial criminal justice system. Training should focus on First Nations cultures and traditions, histories, the conditions faced by First Nations peoples, and inherent biases within the justice system. Since police officers are often the first points of contact for First Nations people when interacting with the criminal justice system, policing reform presents an opportunity to dismantle systemic racism and foster new approaches.

5 Two-Spirit, Lesbian, Gay, Bisexual, Transgender, Queer, Questioning, Intersex, Asexual, and the + denotes other genders that may not be captured by the previous terms.



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For the FNJS to be successful, complete and respectful collaboration is required from all stakeholders. Those include individual First Nations and representative organizations, as well all federal, provincial, territorial governments and respective institutions. Entities such as the Department of Justice, the Ministry of the Attorney General, Public Safety Canada, Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC), Indigenous Services Canada (ISC), the Royal Canadian Mounted Police (RCMP), Public Prosecution Service of Canada, Correctional Services of Canada, Statistics Canada, regional Law Societies, and others, must make real efforts to align their mandates with First Nations partners to support the work of the FNJS.

Co-Implementation Principles

Co-implementation is essential to effectively implement the FNJS and must meaningfully include First Nations and their representative organizations. The following co-implementation principles help guide provinces, territories, the Government of Canada, and relevant organizations in the implementation of the FNJS in true collaboration with First Nations.

1. Collaborative Relationships and Accountability

Collaborative relationships and accountability structures are essential to the co-implementation of the FNJS. In advancing the objectives of the FNJS, the Government of Canada, provinces, territories, and relevant organizations must work in full partnership with First Nations. Every First Nation is unique, as are their relationships with federal, provincial, and territorial counterparts. First Nations must have the ability to determine the appropriate accountability mechanisms and collaborative structures to jointly advance the objectives of the FNJS. These may include bilateral or trilateral tables including different levels of government as determined by participating First Nations.

2. Distinctions-Based Approaches

First Nations have an inherent right to self-determination, which includes jurisdiction over their internal and local affairs. As an aspect of this right, First Nations are entitled to strengthen and maintain their distinct legal and political institutions. There are over 600 distinct First Nations in Canada with unique origins, Creation stories, cultures, histories, traditions, languages, lifestyles, locations, and relationships to their lands, territories and resources. A distinctions-based approach is essential to the co-implementation of the FNJS in a way that respects the uniqueness of First Nations experiences and challenges with the criminal justice system.



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3. Long-Term, Sustainable and Predictable Funding

First Nations require long-term, sustainable and predictable funding to engage in the co-implementation of the FNJS. This will enable First Nations to build capacity to revitalize their laws and legal traditions, while engaging in transformative changes to the criminal justice system. The FNJS supplements existing justice programming for First Nations. As such, funding to support FNJS implementation should not prejudice any existing funding arrangements.

Current funding models and arrangements between the Department of Justice and First Nations are paternalistic, result in undue hardship, and contain unnecessary administrative hurdles. Additionally, these models do not align with First Nations inherent right to self-determination. Crown-First Nations mechanisms must be established to develop new funding models that are long-term, predictable, flexible and First Nations-controlled while reducing administrative burdens. First Nations must be provided with transparent information regarding proposed funding models and have a say on how to prioritize what funding is used for.

4. Ongoing Evaluation and Performance Management

Terms of Reference developed by trilateral or bilateral tables to guide advancement of First Nations justice priorities should include a work plan with an evaluation and performance management framework to identify whether the intended results are being achieved. These assessments should be used to make recommendations to adjust proposed interventions if they aren't working and to help identify interventions that should be duplicated in other First Nations or regions.





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National First Nations Justice Strategy Overview

The FNJS includes two distinct pathways:

Path One: Revitalization of First Nations Laws and Legal Systems supports First Nations in their efforts to revitalize and restore their laws and legal systems. Path one is separated into three thematic areas:

- i. Returning to our Laws
- ii. Recognizing Multiple Jurisdictions
- iii. Protecting the Land

Path Two: Reform of the Canadian Criminal Justice System supports wide-ranging reforms to the administration of justice, including policing, courts, corrections, and parole reform. Path two is separated into four thematic areas that align with the 'four directions' under the IJS:

- i. Justice and wellness
- ii. Administration of justice and access to justice – policing and reform
- iii. Administration of justice and access to justice – corrections and parole reform
- iv. Administration and access to justice – legislative reforms

Strategies: The two paths identify 25 strategies along with corresponding action items. These strategies provide flexible, First Nations-driven approaches to long-standing justice issues. They represent the insight and input of First Nations. The action items provide concrete guidance and recommended approaches to the co-implementation of each strategy.



"...Transformation rather than systems and process change is what we need if we are serious about reform." – Assembly of First Nations National Justice Forum Report, 2022

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Path One: Revitalization of First Nations Laws and Legal Systems

Path one of the FNJS supports the revitalization of First Nations laws and legal systems. It emphasizes the need to ensure First Nations laws and legal systems are empowered through enforcement mechanisms rooted in jurisdiction and inherent rights. It is essential that First Nations laws be respected and enforced by the Canadian legal system. Path one is organized into the following three thematic areas, each with their own corresponding strategies and action items:

Theme One: Returning to our Laws

Theme Two: Recognizing Multiple Jurisdictions

Theme Three: Protecting the Land

Theme One: Returning to our Laws

First Nations laws and legal systems have been disregarded and repressed for generations by successive colonial governments. First Nations require comprehensive support, including predictable and sustainable funding to revitalize their laws.

Strategy 1 – Support for First Nations-led research, knowledge exchange, and capacity-building to revitalize First Nations laws and legal traditions

First Nations across Canada experience the effects of colonial policies differently. As a result, First Nations are at different stages of their journeys to reconnect with traditional ways of being, that include governance, laws and legal systems. The wide range of experiences, capacity, and willingness of First

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"...the Aboriginal right of self-government encompasses the right of Aboriginal nations to establish and administer their own systems of justice, including the power to make laws within the Aboriginal nation's territory. The Commission is of the view that federal, provincial and territorial policy in the area of justice should be formulated and implemented on the foundation of the right of Aboriginal nations to establish and administer their own systems of justice, including the power to make laws, within the Aboriginal nation's territory."

The right to establish a system of justice inheres in each Aboriginal nation. This does not preclude Aboriginal communities within the nation from sharing in the exercise of this authority. It will be for the people of each Aboriginal nation to determine the shape and form of their justice system and the allocation of responsibilities within the nation."



Nations to revitalize their legal systems must be a central consideration within each strategy and action item. Additionally, core funding must be available for First Nations to conduct the research needed to revitalize, restore and develop their laws and legal systems and build the necessary infrastructure and capacity to put these systems into operation.



Action Items

The following action items call on the Government of Canada, provinces, territories, and all relevant organizations working in partnership with First Nations to:

1. Make core funding available to First Nations to build capacity to revitalize and operationalize First Nations laws and legal systems.
2. Provide increased long-term funding that is predictable and adequate for the revitalization of First Nations laws and legal systems and supports capacity development, research, and education.
3. Support the creation, stabilization, or expansion of regionally focused First Nations-led organizations to assist First Nations in researching, developing, and implementing their laws and legal systems.
4. Support Elders and Knowledge Keepers to lead or support community-driven revitalization efforts that honour and recognize ceremonies, ceremonial objects, and stories as fundamental to the revitalization of First Nations laws and legal systems.
5. Support and recognize First Nations intellectual property rights to First Nations laws, legal systems and data.
6. Support the retrieval of First Nations knowledge to be incorporated and shared in the revitalization of First Nations laws and legal systems.
7. Support the revitalization of traditional laws that foster inclusion and protection for 2SLGBTQQIA+ individuals.

Theme Two: Jurisdiction

First Nations have an inherent right to self-determination, which includes authority over their laws and legal systems. The Government of Canada, provinces, and territories must take concrete steps to recognize this aspect of First Nations' self-determination.

Strategy 2 – Obtain federal commitments for legislative changes to recognize First Nations jurisdiction over the administration of justice in First Nations communities.

Success of the FNJS largely depends on legislative and policy reform co-developed with First Nations. The Government of Canada must act urgently to fulfil its legal commitments under *United Nations Declaration on the Rights of Indigenous Peoples Act* (UNDA). At a minimum, this requires the Government of Canada to take all measures necessary to align its laws and policies with the legal standards articulated in UNDRIP.

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Action Items

The following action items call on the Government of Canada to work in partnership with First Nations and their representative organizations to:

1. Create a joint Government of Canada - First Nations National Working Group to co-develop legislation that recognizes First Nations jurisdiction over justice on reserve.
2. Co-develop a First Nations-led oversight body to monitor the implementation of UNDA and National Action Plan commitments with authority to produce recourse or remedy to hold federal, provincial and territorial governments accountable.
3. Incorporate First Nations principles of Ownership, Control, Access, and Possession (OCAP®) into all documents, registries, policies, collections of data and any other collection of information concerning First Nation laws and legal systems.

Strategy 3 – Provide a legal framework and legislative authority to recognize support the enforcement of First Nations laws

To align with federal legal commitments, Canadian courts and the Department of Justice must recognize and authorize Crown prosecutors and judges to enforce First Nations laws and bylaws. Further, the jurisdiction of First Nations Courts must be recognized by other orders of Government and empowered to hear cases involving the enforcement of First Nations laws and bylaws. To support enforcement, there must be legislative recognition of First Nation laws by federal, provincial, and territorial governments that make these laws and subsequent decisions binding on Canadian society.

"The Government of Canada must, in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure that the laws of Canada are consistent with the Declaration."

United Nations Declaration on the Rights of Indigenous Peoples Act, S.C. 2021, c. 14, s 5

Action Items

The following action items call on the Government of Canada, provinces, and territories to work in partnership with First Nations and their representative organizations to:

1. Create legislative mechanisms that recognize and facilitate the operationalization of First Nations laws and institutions with respect to all aspects of criminal justice, public safety, and community wellness.
2. Amend the *Criminal Code* and other relevant laws to reflect these legislative mechanisms and to make clear the delegated roles and responsibilities, and areas of jurisdiction.
3. Co-develop tripartite or bilateral agreements with First Nations to develop protocols to ensure enforcement of First Nations laws.



Strategy 4 – Develop federal policy and fiscal frameworks to support and facilitate the adequate and effective enforcement, prosecution, and adjudication of First Nations laws, which could be advanced through the negotiation and implementation of tripartite and bilateral agreements.

First Nations have an inherent right to self-determination and self-government. A distinctions-based approach is necessary to recognize the uniqueness of First Nations laws. All levels of government must work in partnership with First Nations to support the revitalization of their traditional or customary laws. Negotiation and implementation of tripartite or bilateral agreements to facilitate adequate and effective enforcement, prosecution, and adjudication of First Nations laws must be led by First Nations. New federal policy and fiscal frameworks for the development of such agreements must recognize First Nations jurisdiction over laws and legal systems and inherent right to self-government.



Action Items

1. With support from national and regional First Nations organizations, First Nations can initiate administration of justice negotiations and discussions on revitalization of First Nations laws, legal systems and traditions that involve Crown prosecutors, Defense Counsel, Legal Aid Services, Judges, and Corrections.
2. Call on law societies to provide culturally distinctive classifications and regulation standards for those First Nations legal practitioners utilizing First Nations laws to protect against exploitative practices.
3. Create regionally governed First Nations law societies to review how First Nations laws are being utilized to adjudicate legal matters.
4. Create legislated opt-in processes for First Nations ready to enact and enforce their own First Nations laws and legal systems.

"...First Nations concepts of adjudication and enforcement will be informed by that First Nation's laws, based on their unique Indigenous identity and sources of their laws." – Assembly of First Nations Recommendations for a FN Justice Strategy, 2024

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Theme Three: Protecting the Land

Strategy 5 – Ensure First Nations traditional laws and responsibilities over their lands, territories and resources are respected by the criminal justice system.

Divergence between the Canadian legal system and First Nations legal systems cause undue adverse impacts on First Nations. This conflict is witnessed regularly in instances involving resource extraction projects from traditional First Nations lands and territories. For example, First Nations individuals may have responsibilities within their traditional laws to protect land and resources. When carrying out these responsibilities they are often met with aggressive police or military responses, subjected to court orders which conflict with First Nations laws, and criminalized if they do not obey those orders. For transformative change in the way the justice system operates, First Nations laws must be given equal weight. Where there are conflicts between the two systems, there must be fair, independent, impartial, open and transparent processes in place, that give due recognition to First Nations laws and legal orders, to reconcile these conflicts.



Action Items

The following action items call on the Government of Canada to work with First Nations and their representative organizations to:

1. Conduct a joint review of the different types of legal responses used against First Nations exercising their rights over their lands, territories, and resources.
2. Co-develop new mechanisms that are fair, independent, impartial, open and transparent to respond to land and resource conflicts which do not criminalize First Nations for carrying out and enforcing their traditional laws and responsibilities.

"[Canada shall] create guidelines for appropriate criminal justice system responses to First Nations land and resource protection which respects First nations traditional laws and responsibilities." – Indigenous Justice Strategy, 2025



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Path Two: Reforming the Canadian Criminal Justice System

Reforming the Canadian criminal justice system will require overhauling the colonial systems that have negatively impacted First Nations. A comprehensive review of existing practices is needed to ensure the reforms are effective. Path two of the FNJS articulates the importance of reforming the Canadian criminal justice system and outlines four themes concerning access to justice:

Theme One: Justice & Wellness

Theme Two: Policing and Reform

Theme Three: Corrections & Parole Reform

Theme Four: Legislative Reforms

Theme One: Justice and Wellness

The FNJS recognizes that justice and wellness are interrelated, and that justice must be viewed holistically and broadly to include all aspects of health and wellbeing of individuals, communities, and the environment. Interventions to address the overrepresentation of First Nations peoples in the criminal justice system must begin from a place of prevention, where trauma and healing supports, youth programming, and cultural connection are prioritized. The FNJS must also ensure wraparound supports are available for First Nations peoples within the justice system at every point of contact, including while they are before the Courts, participating in a diversion program, in custody on remand, serving a sentence in the community or in a custodial institution, and in post-release processes.

Justice from the perspective of wellness speaks to the multilayered social issues facing FN people that directly impact their experience with and within the justice system. It is necessary to identify individual needs and social factors which may have brought First Nations individuals before the courts, such as

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"In our review of Aboriginal justice initiatives, we commented on the fact that thus far the great majority of financial resources have been devoted to indigenization of the existing justice system. We do not suggest that these initiatives be cut back and the moneys reallocated to Aboriginal justice systems. Rather, to ensure that effective change takes place, it is necessary to proceed

simultaneously with reform of the existing system and the investment necessary to enable Aboriginal nations to build the infrastructure for their own systems of justice."

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Gladue factors, and to link them with supports. First Nations individuals before the Court may be dealing with various challenges including mental health and addictions, Fetal Alcohol Spectrum Disorder (FASD), poverty, lack of housing, and trauma.

Wraparound supports must also be available for First Nations impacted by crime, including victims of violence and Survivors and families of missing and murdered First Nations peoples. Overall community safety is also a key component of justice and wellness.

Strategy 6 – Expand federal support to provide adequate and long-term funding, in partnership with the provinces and territories, for holistic First Nations Community Justice Centres that can provide culturally-sensitive wraparound supports and referrals to address social determinants of justice.



For many First Nations people, the Canadian criminal justice system is foreign and difficult to access and navigate. The process itself carries historical trauma that often results in further loss and grief as individuals and families navigate the system. First Nations Community Justice Centres are required throughout every region to help First Nations navigate the system, improve access to justice, and reduce gaps in service.

In establishing First Nations Community Justice Centres, special consideration should be given to ensure individuals from urban, remote and Northern communities have equal access to supports and services, preferably through Centres local to each geographic population. Moreover, these spaces must be culturally relevant and offer individuals access to First Nations Elders and Knowledge Keepers, and wraparound services to assist with judicial and extra-judicial needs, including access to legal representation. This includes particular attention to address social determinants of justice such as addictions, mental health, FASD, Child and Family Services involvement, sexual exploitation, and gang-involvement.

Funding for First Nations Community Justice Centres must be flexible, long-term, predictable, and sustainable, while also being First Nations-controlled.

Action Items

The following action items call on the Government of Canada, provinces, and territories to collaborate with First Nations and their representative organizations to:

1. Create designated representatives that assist in the coordination and funding of new and existing First Nations Community Justice Centres throughout each region that offer culturally appropriate wraparound services and legal representation from First Nations legal practitioners.
2. Seek increased Legal Aid funding and provide Legal Aid services directly in First Nations communities and on a regular basis.
3. Provide free legal education services in First Nations communities and First Nations Community Justice Centres.



Strategy 7 – Work with First Nations and provincial/territorial partners to research, develop, and expand the use of distinctions-based and culturally-tailored programming to support First Nations justice processes that promote rehabilitation and healing.

For many First Nations people, experiences with the criminal justice system are often impacted by social factors including physical and mental health, intergenerational trauma, and exposure to the child welfare system. These factors influence their experiences with the police, courts and sentencing processes, the prison system, and post-release. The development of a holistic approach that considers all social determinants of justice within reform initiatives aligns with First Nations cultural values of interconnectedness. Research, development, and expansion of culturally tailored programming for victims of crime must also be part of the strategy to ensure individuals are supported in their healing.



Action Items

The following action items call on the Government of Canada, provinces, and territories to collaborate with First Nations and their representative organizations to:

1. Review existing cultural programs to create a national repository that is publicly accessible and that identifies gaps in services in each region.
2. Seek provincial-territorial support for designated representatives to assist in coordination and funding of new and existing cultural programs.
3. Expand research, awareness and training to promote positive outcomes of diversion.
4. Co-develop a holistic approach to justice reform based on First Nations teachings that incorporates a social determinants of justice lens to effectuate meaningful change and improve wellness.
5. Establish a permanent national forum of partners to co-develop a process for continual monitoring, evaluation and reporting on key programming and services offered by institutional and community-based organizations that promote healing, habituation, and reduce recidivism and over-representation of First Nations in the criminal justice system.
6. Develop a centralized monitoring body that will measure, evaluate and provide guidance and oversight to organizations that provide programming and services.
7. Conduct research to evaluate whether First Nations and/or Indigenous Courts, court worker programs, and the Gladue process are meeting their intended objectives, and implement reforms as appropriate.

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Strategy 8 – Expand access to culturally-responsive, First Nations-led, trauma-informed victims services and supports, including support for the families of missing and murdered First Nations women, girls, Two Spirit, gender diverse people, men and boys.

Victim services must be cognizant of the wider implications on families, communities, and First Nations when developing or administering these services. Programming must incorporate a holistic approach to support victims that is inclusive of the families of Missing, Murdered, Indigenous Women, Girls, and Two-Spirit Plus People (MMIWG2S+), the unique experiences of 2SLGBTQQIA+ people, Missing Murdered Indigenous Men and Boys (MMIMB), and the wellbeing of the community at large.

Action Items

The following action items call on the Government of Canada, provinces, and territories to collaborate with First Nations and their representative organizations to:

1. Review relevant victims services policy manuals to ensure and MMIWG2S+ and MMIMB Survivors and families are notified and given opportunity to hear the statement of facts against the accused prior to being in courtroom.
2. Ensure government policy requires policing, corrections, judicial, legal and all other personnel in the criminal justice system to undergo trauma-informed training annually.
3. Develop culturally responsive, First Nations-led, trauma-informed victim services and supports for families of MMIWG2S+ through a Gender-Based Analysis Plus (GBA+) lens.
4. Co-develop a First Nations Victim Bill of Rights.
5. Appoint provincial/territorial designated representatives to assist in coordination and funding of new and existing victim services throughout each region.
6. Expand translation services for First Nations individuals who only speak their First Nations languages to allow for greater accessibility.
7. Support existing programs through adequate funding, review existing services to identify gaps, and expand programming to ensure there are wrap-around services for families and survivors, including mental health and grief supports, cultural supports, information on how to navigate the justice and legal systems, supports for families while a loved one is missing, and aftercare supports.

We call upon provincial and territorial governments to develop an enhanced, holistic, comprehensive approach for the provision of support to Indigenous victims of crime and families and friends of Indigenous murdered or missing persons.

National Inquiry into Missing and Murdered Indigenous Women and Girls, Calls for Justice (2019), Call for Justice for All Governments: Justice 5.6



8. Ensure police services and other justice system personnel are aware of existing First Nations alerting systems when a First Nations person goes missing, and that there are wraparound supports available to families and survivors throughout this process.
9. Undertake an expedited process to establish an Indigenous Human Rights Framework, which includes Indigenous Human Rights Ombudspersons and an Indigenous Human Rights Tribunal, pursuant to the National Inquiry into Missing and Murdered Women and Girls' Call For Justice 1.7, which will be available to First Nations as a recourse to uphold their human rights.

Strategy 9 – Expand hiring of First Nations Elders and Knowledge Keepers, including appropriate resources and supports, to work within Justice institutions and ensure First Nations receive culturally-appropriate support when interacting with the justice system.

First Nations Elders and Knowledge Keepers carry the necessary teachings and experience and are essential to incorporate traditional healing into the justice system. Their teachings and experiences are invaluable in assisting First Nations individuals involved with the justice system, victims, families and First Nations both in their healing journeys and in reforming the Canadian Justice System. As such, they deserve the utmost respect from everyone involved in the criminal justice process from police to Crown Counsel, to Judges and corrections workers.



Action Items

The following action items call on the Government of Canada, provinces, and territories to collaborate with First Nations and their representative organizations to:

1. Develop bilateral working groups within all levels of police, justice and correctional institutions that include First Nations leaders, Elders and Knowledge Keepers, with a mandate to review and improve the utilization of Elders and Knowledge Keepers in the criminal justice system.
2. Review and expand 'Elder' designations to include Knowledge Keepers, allowing younger adults carrying cultural knowledge to step into these roles.
3. Develop standards and protocols with First Nations to determine whether an individual being put forward for an Elder or Knowledge Keeper role is well-respected and accepted as such by the First Nations being served.
4. Provide clearly mandated long-term and equitable funding that adequately supports fully staffed justice programming within all justice institutions, including but not limited to, Healing Lodges and the First Nations Court Worker program.
5. Expand Indigenous Liaison Officer and Native Inmate Liaison Worker programs to ensure these supports are adequately available within institutions, respected by the institutions, and include wraparound supports to ensure First Nations people have assistance throughout the criminal justice process.
6. Establish local Elders/Knowledge Keepers Councils to guide implementation of the FNJS.

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Strategy 10 – Ensure 2SLGBTQQIA+ peoples have access to low-barrier support services and cultural supports when interacting with the criminal justice system.

Addressing the unique needs of 2SLGBTQQIA+ individuals in the criminal justice system requires a multifaceted approach that includes cultural sensitivity, trauma-informed care, restorative justice, and an ongoing commitment to safety and inclusivity. Building trust and creating partnerships with 2SLGBTQQIA+ communities is essential to improving outcomes and fostering a more respectful and equitable justice system.

Action Items

The following action items call on the Government of Canada, provinces, and territories to collaborate with First Nations and their representative organizations to:

1. Increase the quality and precision of criminal justice system-related data collection to capture the diversity of the 2SLGBTQQIA+ community. Intersectional data must be included to recognize how multiple factors can intersect to compound the experiences of First Nations.
2. Increase access to low-barrier support services and cultural supports for 2SLGBTQQIA+ who are incarcerated.
3. When hiring Elders and Knowledge Keepers to work within the justice system, ensure inclusion and representation of 2SLGBTQQIA+ Elders and Knowledge Keepers.
4. Advocate for education on the experiences of 2SLGBTQQIA+ to address discrimination, especially homophobia and transphobia, in policing.
5. Improve investigation of crimes against 2SLGBTQQIA+ and ensure accountability for investigations and handling of cases involving 2SLGBTQQIA+.
6. Implement mandatory training on cultural sensitivity, human rights, and trauma-informed approaches for all corrections, police, prosecutors, lawyers, judges, clerks, and personnel in the criminal justice system on an annual basis that includes cultural sensitivity training on 2SLGBTQQIA+ communities to raise awareness and improve understanding.
7. Take action to end misgendering in correctional institutions.

We call upon the federal government to amend data collection and intake-screening processes to gather distinctions-based and intersectional data about Indigenous women, girls, and 2SLGBTQQIA people.

National Inquiry into Missing and Murdered Indigenous Women and Girls, Calls for Justice (2019), Call for Justice for All Governments: Justice 5.24



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We call upon federal, provincial, and territorial governments to provide community-based and Indigenous-specific options for sentencing.

National Inquiry into Missing and Murdered Indigenous Women and Girls, Calls for Justice (2019), Call for Justice for All Governments: Justice 5.16

Strategy 11 – Expand control and access to First Nations-run alternatives to sentencing for First Nations people in federal and provincial custody, which exist independently from the Canadian criminal justice system, to support culturally appropriate justice responses, healing, and wellness.

The overrepresentation of First Nations in federal and provincial custody remains a major concern despite decades of awareness and advocacy efforts. The concepts and approaches to punishment and rehabilitation vary greatly between colonial and First Nations legal traditions. Many First Nations legal traditions are directed towards the healing and restoring of relationships between offenders and victims, victims' families and the community at large. Each First Nation has its own laws, legal traditions, ways and teachings to effectively deal with and restore relations and ultimately knows the most appropriate course of action for achieving this objective.

When dealing with First Nations accused and offenders, Crown Prosecutors, Judges and correctional staff must engage in a coordinated effort to meaningfully incorporate these culturally appropriate and First Nations-led responses to justice, healing, and wellness. There must be judicial recognition that a First Nations resolution of a matter in accordance with its own laws and legal traditions is determinative, so the Canadian Court or judicial process does not have to retry the matter or provide final approval.

To ensure communities have the capacity to safely and effectively deal with these situations, they must be provided with core funding that is long-term, predictable, flexible, and sustainable.



Action Items

The following action items call on the Government of Canada, provinces, and territories to collaborate with First Nations and their representative organizations to:

1. Expand First Nations-run restorative justice programs.
2. Undertake a regionally focused justice service needs-and-costing analysis to identify gaps in providing culturally appropriate justice responses, healing and wellness.
3. Seek provincial/territorial support to create designated representatives to assist in coordination and funding of new and existing First Nations-run alternatives to sentencing.
4. Develop operational protocols between Crown Counsels and the Department of Justice to clarify and affirm their roles and responsibilities related to First Nation legal traditions and systems. Provide First Nation communities with core funding that is long-term, predictable, flexible and sustainable.

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Strategy 12 – Expand existing justice programs and initiatives (or facilitate the creation of new programs and initiatives) that are designed and delivered by First Nations and First Nations-led organizations for First Nations people.

Every First Nation has their own unique challenges, capacities, and complexities that reflect varied experiences with colonial history and the Canadian criminal justice system. Given this, First Nations are best positioned to meet the needs of their people and determine what is needed for meaningful reform of existing criminal justice programs and initiatives.



Action Items

The following action items call on the Government of Canada to collaborate with First Nations and their representative organizations to:

1. Increase core funding for new and existing First Nations Justice Programs and work with First Nations to develop the necessary physical infrastructure to sustain these programs and initiatives.
2. Fund an annual knowledge sharing forum led by First Nations and leadership to discuss best practices in existing services and programs and create dialogue on developing capacity and new programs and initiatives.
3. Provide capacity core funding for operations and infrastructure to national and regional First Nations bodies and organizations to address readiness of First Nations to expand their systems or stabilize existing programs.
4. Provide increased funding to support education to raise awareness on services and available programming for First Nations.

"In keeping with the United Nations Declaration on the Rights of Indigenous Peoples, we call upon the federal government, in collaboration with Aboriginal organizations, to fund the establishment of Indigenous law institutes for the development, use, and understanding of Indigenous laws and access to justice in accordance with the unique cultures of Aboriginal peoples in Canada." – Truth and Reconciliation Commission of Canada: Calls to Action, 2015, s. 50



Theme Two: Policing and Court Reform

First Nations are overpoliced in urban areas, underserved by RCMP on-reserve, and First Nations police services remain underfunded.

The historic relationship between First Nations and Canada's law enforcement agencies has been tenuous at best. From the outset in the 19th century, the objective of the RCMP as an established paramilitary police organization was to facilitate the removal of First Nations from their lands and enforce *Indian Act* policies. This enforcement of the *Indian Act* included the illegal pass system, the ban on ceremonies, and the mandatory attendance of First Nations children in Canada's Indian residential school system.⁶

The relationship has been further tarnished by numerous incidences of police misconduct and use of excessive force against First Nations, as found by numerous inquiries and commissions. First Nations deaths following interactions with the police surged in late 2024, underscoring the need for greater accountability from police forces. It is vitally important that the RCMP and other police services be held accountable for their treatment of First Nations peoples, particularly in the context of documented failures in investigating and responding to cases of MMIWG2S+ people.

AFN Resolution 63/2024, *Calls for a National Inquiry into Systemic Racism in Policing and First Nations Peoples Deaths*, identifies several reform measures that should be implemented immediately:

- a. Data collection consistent with Indigenous data sovereignty principles that will inform policies to address systemic racism,
- b. Demilitarization of police forces and a cap on tactical deployments and use of lethal force,
- c. Implementation of independent First Nations' oversight, access, and accountability over data recorded by body-worn cameras,
- d. Establishment of a national Crisis Intervention Team across Canada to provide a specialized response to people in crisis 24-hours per day,
- e. Immediately after a serious incident has occurred involving a First Nations person, that the incident investigation includes a First Nations person who has been trained to assist in the investigation,
- f. Requirements for Federal, Provincial/Territorial, and municipal police forces to institute operational policy that requires an independent First Nations police investigator to assist with cases involving the deaths of First Nations people by police, and;
- g. That the RCMP, provincial police, municipal police, Marshals, conservation officers, sheriffs, and peace officers immediately implement the remaining five of the 8 Can't Wait policies, which are:

6 M. Gouldhawke, *Canada's Colonial Cops* (Mar 2020), online: <https://thenewinquiry.com/a-condensed-history-of-canadas-colonial-cops>.

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- i. Mandatory de-escalation and harm reduction technique training for officers;
- ii. A ban on the use of choke holds and extreme restraint techniques, including “knee on neck” restraints;
- iii. A ban on shooting at vehicles;
- iv. Requirements for police officers to give verbal warnings; and
- v. Requirements for a “use of force continuum”, requiring that the use of force match the circumstance.

Strategy 13 – Provide culturally responsive policing by building respectful working relationships between Police Services and First Nations through increasing cultural knowledge and understanding history of the First Nations being served

Culturally responsive policing requires connecting policing to the culture of the First Nations being served. Culturally responsive policing should be less reliant on traditional western approaches to punishment and prosecution and instead be based on First Nations laws, traditions and values. This often means focusing on restorative justice and community harmony rather than focusing on individual punitive measures. Regular engagement with First Nations is important to building strong partnerships and understanding First Nations’ priorities.

We call upon all actors in the justice system, including police services, to build respectful working relationships with Indigenous Peoples by knowing, understanding, and respecting the people they are serving.

National Inquiry into Missing and Murdered Indigenous Women and Girls, Calls for Justice (2019), Call for Justice for All Governments: Justice 9.1

Action Items:

The following action items call on police services across Turtle Island to collaborate with First Nations and their representative organizations to:

1. Develop guidelines for community engagement, partnerships, and culturally responsive policing that connects policing to the culture of the First Nations being served.
2. Review and revise all policies, practices, and procedures to ensure that service delivery is culturally appropriate and meets the needs of First Nations, including victims and survivors of violence.
3. Establish engagement mechanisms and partnerships with First Nations, including women, Elders/ Knowledge Keepers, youth, and 2SLGBTQQIA+ people from the respective territories and/or who are resident within a police service’s jurisdiction, for guidance on culturally responsive police that connects policing to the culture of the relevant First Nations being served.
4. Ensure appropriate First Nations representation, including First Nations women, girls, and 2SLGBTQQIA+ people, on police service boards and oversight authorities.



5. Undertake training and education of all officers and other relevant staff so that they understand and implement culturally appropriate and trauma-informed practices, especially when dealing with families of MMIWG2S+.
6. Develop an operational protocol between RCMP and provincial police services and First Nations based on local First Nations culture, incorporating liaison with local Elders and Knowledge Keepers, and Chief & council that is designed to increase the use of police discretion/ understanding when police are called to a scene and consider laying charges against First Nations individuals.

Strategy 14 – Develop standardized protocols, policies, and practices for police services, with the objective of ensuring that all cases reported by First Nations, especially cases of MMIWG2S+, are thoroughly investigated

Governments and police forces across Turtle Island have never fully acknowledged the role they have played in the colonization of First Nations' territories and the violence perpetrated against First Nations women, girls, and 2SLGBTQIA+ people. Moreover, they have failed to address the longstanding bias and systemic racism that result from Canada's colonial past. Law enforcement agencies in Canada have historically enforced racist and discriminatory laws and policies, which embed bias and racism in the ways that police officers interact with First Nations peoples. It is vitally important that police services be held accountable for their treatment of First Nations, including MMIWG2S+ survivors and families.



Action Items

The following action items call on the Government of Canada, provinces, territories and police forces to collaborate with First Nations and their representative organizations to:

1. Fund awareness campaigns that inform First Nations of policies, practices, and programs that make communities safe.
2. Establish a communication protocol between First Nations and policing services to improve communication throughout an investigation, from the first report onwards.
3. Improve coordination among all parties, including communication between First Nations and police services and across government departments.
4. Develop robust protocols to mitigate the impacts of high turnover among officers assigned to the files of missing and murdered First Nations women, girls and 2SLGBTQIA+ people, and acknowledge this may negatively impact both progress in investigations and relationships with family members.
5. Create a national strategy through the Canadian Association of Chiefs of Police to ensure consistency in mechanisms for reporting missing First Nations women, girls, 2SLGBTQIA+ people, men and boys, in conjunction with establishing a national database.

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6. Work with federal and provincial/territorial governments to establish a nationwide emergency contact number.
7. Increase funding for community education on trafficking, domestic abuse, mental health and other factors that may impact situations where First Nations persons go missing or murdered.

Strategy 15 – Create civilian First Nations advisory committees and include First Nations representation in police oversight bodies and complaints review processes to include First Nations perspectives in police operations and review of officer conduct

Police governing bodies focus on the operational structures of police services while oversight mechanisms focus on performance and conduct of officers. Creating a unique First Nations advisory committee for each police service, police division or police detachment will improve culturally responsive services by incorporating First Nations perspectives in both the operations and review of conduct of officers. Including First Nations representation on police oversight and complaints review processes will provide essential perspectives to guide police operations and increase accountability in the review of officer conduct.

We call upon federal and provincial governments to establish robust and well-funded Indigenous civilian police oversight bodies in all jurisdictions, which must include representation of Indigenous women, girls, and 2SLGBTQQIA people, inclusive of diverse Indigenous cultural backgrounds...

National Inquiry into Missing and Murdered Indigenous Women and Girls, Calls for Justice (2019), Call for Justice for All Governments: Justice 5.7

Action Items

The following action items call on the Government of Canada, provinces, territories, and police forces across Turtle Island to collaborate with First Nations and their representative organizations to:

1. Create local civilian First Nations advisory committees to support police services or police divisions on providing culturally responsive policing and ensure that First Nation perspectives are incorporated in both operations and review of conduct of officers.
2. Ensure First Nations representation within the Civilian Review and Complaints Commission.
3. Explore the creation of a new First Nations oversight body designed to address challenges with policing, to review quality of service, and prioritize new approaches to public safety for communities.



Strategy 16 – Implement mandatory and ongoing cultural safety training for justice system practitioners to improve awareness of the history, culture and circumstances of First Nations people, including the ongoing effects of colonialism.

Training for justice practitioners (corrections, police, prosecutors, lawyers, judges, clerks, and personnel in the criminal justice system), must be an ongoing exercise, rather than a one-time or ad hoc requirement. Given the inherent systemic biases in the Canadian criminal justice system, education and training programs must be mandatory for all justice practitioners. In addition to improving awareness of the history, culture, and circumstances of First Nations, training programs should include awareness of inherent unconscious biases. For the training to be most impactful, First Nations organizations and communities must be provided funding to co-develop, deliver, and/or lead comprehensive and meaningful training.



Action Items:

The following action items call on the Government of Canada, provinces, territories, and police forces across Turtle Island to collaborate with First Nations and their representative organizations to:

1. Increase awareness for justice practitioners (corrections, police, prosecutors, lawyers, judges, clerks and personnel in the criminal justice system) through training and policies around First Nations justice initiatives such as diversion, Gladue process, and other programs and services.
2. Implement mandatory and ongoing cultural safety training of individuals working at all points within the justice system (corrections, police, prosecutors, lawyers, clerks, and personnel in the criminal justice system) on the history, culture, and circumstances of First Nations, including the ongoing effects of colonization. Cultural safety training should also focus on awareness of unconscious internalized biases, which may impact the justice practitioner's role, and how to counter these biases when interacting with First Nations people.
3. Press for justice institutions to undertake an honest review of their policies, practices, and applicable laws and regulations, with opportunities for First Nations to participate in the review process. First Nations participation will help uncover built-in systemic biases against First Nations and commit to making real substantive changes to their policies and practices, and to advocate for changes to applicable laws and regulations that address these biases.
4. Ensure fulsome training is developed, delivered, and monitored by adequately funded First Nations-led organizations and communities.

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Theme Three: Corrections and Parole Reform

Corrections and parole are downstream criminal justice processes in which a disproportionate number of First Nations individuals become entangled due to a constellation of social-economic factors, systemic inequality, discrimination, and lack of supportive services.

As the Royal Commission on Aboriginal People noted, the overrepresentation of Indigenous people is "injustice personified."⁷ Given the colonial legacy of the Canadian justice system, including correction and parole, substantive reform to meet the needs of First Nations will require partnering with First Nations to conduct careful comprehensive reviews of existing processes, conduct engagement, and make transformative changes based on the findings. In addition, implementing existing recommendations from oversight mechanisms currently in place will accelerate reform.

The aim of corrections and parole reform must be to end the cycle of incarceration and overrepresentation of First Nations people. Examples of actions that should be considered include co-development of a First Nations decarceration strategy, gang-exit and prevention strategy, and a national standard for Gladue reports.

Further, culturally appropriate wraparound supports must be available within the corrections and parole contexts to ensure First Nations individuals who find themselves within these systems have access to Elders and Knowledge Keepers, cultural practices, ceremonies, traditional teachings, opportunities for healing, and support post-release from custody.

First Nations must take the lead on dismantling processes that have never been designed for success, and on creating the solutions going forward.

Strategy 17 – Culturally-informed wraparound supports are needed for First Nations at every point of contact with the justice system, from initial police contact to remand and bail processes, sentencing, incarceration, parole board meetings and post-release. Additionally, these supports should extend and be available to the offender's family (immediate and extended) throughout the experience with the criminal justice system

Wraparound supports must be available for First Nations at every point of contact with the criminal justice system, including within courts, correctional institutions, and communities, to support reintegration and healing. This requires a scan of existing services to identify gaps. The wraparound supports and services must operate under an equitable framework with long-term sustainable

We call upon the federal government to fully implement the recommendations in the reports of the Office of the Correctional Investigator...in order to reduce the gross overrepresentation of Indigenous women and girls in the criminal justice system.

National Inquiry into Missing and Murdered Indigenous Women and Girls, Calls for Justice (2019), Call for Justice for All Governments: Justice 5.7

⁷ Royal Commission on Aboriginal People, Bridging the Cultural Divide, A Report on Aboriginal People, online: <https://data2.archives.ca/rcap/pdf/rcap-464.pdf> at 28.



funding. Assessment must consider not only the number of services and programs funded and the populations served, but also monitor the effectiveness of these programs to allow for adjustments as needed.



Action Items

The following action items call on the Government of Canada, provinces, territories, and correctional institutions to collaborate with First Nations and their representative organizations to:

1. Assess existing services at every point of contact with the criminal justice system to identify gaps and monitor the effectiveness of these programs and services.
2. Establish long-term and equitable funding that provides for fully staffed Healing Lodges and First Nations cultural programming, such as the First Nations court worker program.
3. Review and expand Elder designations to include the concept of Knowledge Keepers to allow younger adults to step into these roles.
4. Increase coordinated release plans and expand funding for halfway houses and wraparound services.
5. Provide funding for First Nations and their members to build effective transition, reunification, and reintegration programs to support the decrease in recidivism and encourage restorative justice practices and outcomes.
6. Formally review federal and provincial facilities to address overcrowding and inhumane conditions for First Nations inmates.
7. Provide increased research and data collection of First Nations deaths in custody in both federal and provincial correction facilities.
8. Create regional Native Inmate Liaison Officer (NILO) departments that navigate and coordinate services within each region to ensure there are no gaps in services and that programs are operating effectively.
9. Expand NILO worker program services to liaise with aftercare and reintegration workers and family in a safety net approach to ensure no gaps in their journey to reintegration.
10. Increase culturally sensitive and trauma-informed training for NILOs to build increased understanding of First Nations programs while assisting in building healthy working relationships with Elders and Knowledge Keepers.
11. Address correctional institution culture that diverts NILOs from their work and being assigned other unrelated tasks in the institution and prevents Elders and Knowledge Keepers from doing their work.

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Strategy 18 – Establish long-term and equitable funding models for existing and future community-led section 81 healing lodges as identified in the Office of the Correctional Investigator’s report, Ten Years Since Spirit Matters.

As the Office of the Correctional Investigator recommended in *Ten Years Since Spirit Matters*⁸ a new funding model for community-led healing lodges should be co-developed with communities and organizations to support their specific needs and achieve resourcing parity with state-run lodges. In addition to bolstering funding for existing community-run lodges, there is a need for funding and support for capacity-building for First Nations to establish new section 81 agreements.



Action Items

The following action items call on the Government of Canada, provinces, and territories to collaborate with First Nations and their representative organizations to:

1. Make available long-term and equitable funding to ensure existing Healing Lodges are fully staffed, and for the establishment of new lodges.
2. Provide appropriate compensation for Elders and Knowledge Keepers working in section 81 Healing Lodges.
3. Include administrative protocols to ensure Elders, Knowledge Keepers, and staff that work at Healing Lodges receive appropriate mental and spiritual health supports.
4. Transfer control and ownership of existing government-run Healing Lodges, providing the necessary resources and supports, to First Nations or First Nations-led organizations with capacity to operate these facilities.

Strategy 19 – Expand community-administered correctional services, that are designed and delivered by First Nations governments or First Nations-led representative organizations.

Interaction with the criminal justice system can provide a point of intervention where, with appropriate supports, an individual can begin a healing journey and make positive changes. However, often, correctional institutions do not provide an environment that supports healing. Innovative approaches are needed to turn correctional services over to First Nations to provide meaningful interventions that address the root causes of criminal involvement.

8 Office of the Correctional Investigator, *Ten Years Since Spirit Matters: A Roadmap for the Reform of Indigenous Corrections in Canada* online: <https://oci-bec.gc.ca/sites/default/files/2023-10/Spirit%20Matters%20EN%20C3%94%C3%87%C3%B4%20Web.pdf>



Action Item

This action item calls on the Government of Canada to collaborate with First Nations and their representative organizations to:

1. Fund a First Nations-led national engagement initiative to create capacity, interest, and innovation among First Nations communities and organizations (urban and rural) to enter into section 81 (Healing Lodges managed by Indigenous communities) and section 84 (Indigenous community release and reintegration planning) agreements for the care, custody, and supervision of First Nations people under federal sentence, as recommended in the Office of the Correctional Investigator's *Ten Years Since Spirit Matters Report*.



Action Items

The following action items call on the Government of Canada, provinces, territories, CSC, and correctional institutions to collaborate with First Nations and their representative organizations to:

1. Review and update existing information sharing agreements and protocols between First Nations and CSC to ensure effective standards are in place to facilitate the information sharing.
2. Review and identify potential legislative changes required to ensure First Nations have access to information on their members who are incarcerated.
3. Provide safe storage and access to security classifications to prevent misuse and weaponization against First Nations offenders.
4. Review and create new tools for security classification for First Nations in order to ensure that case management and correctional administrative staff have cultural awareness training and utilize a gender-based analysis plus (GBA+) lens when using the tools to inform new classification designations.
5. Expand the office of the Deputy Commissioner for Indigenous Corrections to include distinctions-based representation.
6. Increase opportunities for First Nations offenders to have their security level reassessed following successful completion of a correctional program.

Strategy 20 – Review and report on existing systems within correctional institutions, including the security classification process, to eliminate barriers and address systemic discrimination

An initial comprehensive review of existing systems within correctional institutions is required, followed by annual reporting by Correctional Services Canada (CSC) with performance indicators outlining how systemic discrimination and barriers are being addressed to support First Nations serving a custodial

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sentence. As First Nations are significantly overrepresented in higher security classification levels, regular disaggregated data on the number of First Nations at each classification level, as well as reporting on the length of time it takes to move to lower security levels, will provide regular measures to assess progress.

Strategy 21 – Develop a decarceration strategic framework with directives for all areas of the criminal justice system

To reduce the overrepresentation of First Nations in the criminal justice system, a decarceration strategic framework must be co-developed. The decarceration strategic framework must permeate the existing justice system and create more exit points, wraparound supports, and healing for First Nations within the system. Monitoring periods of successful non-involvement by First Nations who have had previous contact with the justice system should be prioritized.



Action Items

The following action items call on the Government of Canada, provinces, territories, CSC, and correctional institutions to collaborate with First Nations and their representative organizations to:

1. Co-develop and co-implement decarceration strategies with First Nations and their representative organizations.
2. Make specific amendments to section 717.1 of the *Criminal Code of Canada* to enable the diversion of First Nations persons to appropriate restorative justice programs and services.
3. Increase the amount of pre-sentencing programming and review directives to reduce recidivism and expand options for remand.
4. Review provincial court practices that routinely jail First Nations facing charges before a bail hearing; uphold the principle that jail should be the last resort for any person before the court.

Strategy 22 – Establish a national gang-exit strategy to support First Nations individuals who wish to exit gang life

First Nations persons wishing to exist gangs should be supported to do so safely. In addition, resources (i.e. social supports, mental health supports, and support to encourage the family member to exit a gang) must be available for their families. Evaluation and monitoring mechanisms should be developed to examine interventions and evaluate the actions. Although the focus is on gang-exit, there must also be preventative measures put in place to avoid gang-entry.



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Action Items

The following action items call on the Government of Canada, provinces, territories, CSC, and correctional institutions to collaborate with First Nations and their representative organizations to:

1. Co-develop and co-implement a National First Nations gang-exit strategy to support First Nations individuals who wish to exit gang life, and their families that want to encourage or support the same.
2. Develop a First Nations youth justice prevention action plan that supports the utilization of diversion of first-time offenders and First Nations youth.
3. Increase engagement with individuals who have successfully left gangs or have worked closely with gang-members in the justice system.
4. Continue research and collection of information on gang-exit strategies to inform a prevention and action plan strategy.
5. Provide post gang support, including job training, education, social and mental health support and community connections.

*"There must be a concerted effort on prevention services and strategies to inform our youth on the available supports and services." – British Columbia Assembly of First Nations
What We Heard Report, 2021*

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Strategy 23 – Conduct a review and develop national standards on the production of Gladue Reports.

Increasing access to Gladue reports and improving national and regional data collection to provide additional context and useful information for which the reports are written. A comprehensive review is needed to assess the gaps in terms of Gladue report services and create national standards for Gladue reports through a national Gladue framework strategy to be co-developed and co-implemented with First Nations.

Action Items

The following action items call on the Government of Canada, provinces, territories, and relevant organizations to collaborate with First Nations and their representative organizations to:

1. Co-develop and co-implement a national Gladue standards strategy with First Nations.
2. Create a national program to provide core funding and standardize the Gladue Report process, including Gladue aftercare services, to ensure the program is timely and responsive, while also distinctions-based, culturally sensitive, and trauma-informed.
3. Reform the Gladue reporting process to include utilization outside sentencing, such as bail hearings, quasi-criminal proceedings, parole hearings and child welfare proceedings, while including safeguards to ensure information is not weaponized against First Nations.
4. Seek core funding for the preparation of, writing, legal review of Gladue Reports in order for Gladue Report services to be available to all First Nations.

We call upon federal, provincial, and territorial governments and all actors in the justice system to consider Gladue reports as a right and to resource them appropriately, and to create national standards for Gladue reports, including strength-based reporting.

National Inquiry into Missing and Murdered Indigenous Women and Girls, Calls for Justice (2019), Call for Justice for All Governments: Justice 5.15

"Because provincial, territorial and federal governments are operating ...[Gladue] without legislation or concrete policy framework, they tend to interpret the Gladue Principle differently, leading to different outcomes. That's why the process varies from Hamilton to Ottawa and Ontario to B.C." – Yellowhead Institute Special Report, Twenty-Five Years of Gladue: Indigenous 'Over-Incarceration' & the Failure of the Criminal Justice System on the Grand River, 2024



Theme Four: Legislative Reform

Reforming the existing criminal justice system requires urgent legislative reform. All levels of government must work collaboratively with First Nations and their representative organizations to create new legislation, address existing legislative issues or gaps, and co-draft necessary amendments to existing legislation to align laws with applicable legal standards.

Through colonial laws, First Nations have faced significant harms including racism and discrimination, disproportionate impacts across a spectrum of socio-economic realities, cultural and language impacts, and threats to individual and collective rights. As a result of the colonial roots of Canadian laws, there is deep mistrust of current legislation to respect the rights of First Nations, including human rights. Given this reality, First Nations leaders, governments, and organizations must be directly involved in the co-development and co-implementation of new laws and amendments to existing laws including the *Criminal Code*, *Corrections and Conditional Release Act (CCRA)*, *Youth Criminal Justice Act (YCJA)*, and *RCMP Act*.

Legislative reform is required to address access to service issues to First Nations focused programs meant to assist individuals involved in the justice system and ensure that laws are following UNDRIP and UNDA.

Strategy 24 – All levels of government working collaboratively with First Nations to identify and co-develop new legislation/legislative processes, and co-draft necessary amendments to key legislative frameworks within the Canadian justice system.

Current legislation that governs various aspects of the *Criminal Code*, *Youth Criminal Justice Act*, and *Corrections and Conditional Release Act* has contributed to the overrepresentation of First Nations people in the judicial system.

There is an urgent need to review these, and other pieces of legislation to ensure they are consistent with UNDRIP, S.5 of UNDA, and the rights of First Nations. Ultimately, to address First Nations overrepresentation, Canada's laws must be amended or repealed to reflect the rights and needs of First Nations.



Action Items:

The following action items call on the Government of Canada, provinces and territories to collaborate with First Nations and their representative organizations to:

1. Utilize existing mechanisms, such as S.5 of the United Nations Declaration National Action Plan, to review relevant laws that impact First Nations rights within the justice system and develop a priority list for urgent repeal or amendment.
2. Expand current models to include shared governance and operation of the current justice system through additional legislative amendments.
3. Expand evidence-based decision-making within the justice system, including the use of alternative measures throughout the judicial process whether during bail, trial or sentencing.

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4. Develop diversion legislation with clear rules and guidelines for police to operationalize diversion where interactions with First Nations are concerned.
5. Commit to amend privacy legislation creating an opt-in process that allows First Nations to know or be notified when their members are in the criminal justice system, including youth and youth in care.
6. Commit through legislation to mandatory funding of Gladue Reports where they are requested by a First Nations person, on the understanding that applying for Gladue reporting is not mandatory.
7. Make amendments to the *Criminal Code* directed toward decreasing the overrepresentation of First Nations in the criminal justice system, including:
 - a. Establish a set of principles that would mandate interpreting the *Criminal Code* through a lens that upholds the minimum human rights standards;
 - b. Address systemic racism against First Nations peoples in the justice system (this would include a guiding principle regarding the presumption of diversion); and,
 - c. Repeal mandatory minimum penalties (these are found throughout sections of the *Criminal Code*); and *Dangerous Offenders Act* (such as the criteria in 753.1), which provide courts with discretion to divert and propose alternative sentencing measures for First Nations individuals.
8. Repeal section 43 of the *Criminal Code* to remove the defense for the use of force on children.
9. Amend section 239 and 273 of the *Criminal Code* to recognize as an aggravating circumstance for an offence referred to in section 235, 236, 239, 264.1(1)(a), 256 – 269, or 271 – 273, the fact the victim of the offence is a female person who is Indigenous.
10. Amend section 222 of the *Criminal Code* to include cases where there is a pattern of intimate partner violence and abuse as murder in the first degree.
11. Amend section 232 of the *Criminal Code* dealing with wrongful convictions to expand the grounds of provocation to include broader range of extenuating factors including Gladue considerations and remove arbitrary restriction that provocation must also constitute an indictable offence.
12. Amend section 717 (1) of the *Criminal Code* to emphasize diversion remedies for First Nations alleged offenders.
13. Amend the definition of “youth” in the *Youth Criminal Justice Act* to raise the age to which the Act applies.
14. Amend the Corrections and *Conditional Release Act* (CCRA) to make the Office of the Correctional Investigator’s recommendations enforceable. Section 179(3) of the CCRA provides that recommendations of the OCI are not binding on the Commissioner nor the Chairperson of the Parole Board of Canada, but this should be required.



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15. Advance legislative commitments to amend CCRA provisions regarding isolation and solitary confinement that prohibits use of these measures on First Nations offenders and those aged between 16-18.
16. Amend the *RCMP Act* to include:
 - a. Mandated cultural training that is community specific and developed, reviewed and updated by the First Nation as necessary.
 - b. Expanded diversion policies.
 - c. The creation of regional and distinctions-based oversight bodies with decision-making authority to work directly with the Commissioner.
 - d. First Nations representation on civilian complaints committees to oversee complaints by First Nations individuals.
 - e. Community consent prior to assigning or replacing an RCMP officer in First Nation communities.

We call upon federal government to consider violence against Indigenous women, girls, and 2SLGBTQQIA people as an aggravating factor at sentencing, and to amend the Criminal Code accordingly...

National Inquiry into Missing and Murdered Indigenous Women and Girls, Calls for Justice (2019), Call for Justice for All Governments: Justice 5.18

Strategy 25 – Creation of legislation and First Nations-led oversight bodies that continuously monitor government progress in reforming the Canadian justice system.

Federal and provincial/territorial governments are complex institutions made up of many departments, agencies, and organizations, each with their own mandates and legislative guidelines. Internal evaluation and monitoring of these various government institutions is typically not conducted through a First Nations lens.

Independent oversight mechanisms inclusive of First Nations perspectives are needed to observe government action and guide proposed amendments to ensure reform initiatives are responsive to First Nations needs and concerns. These oversight mechanisms must receive predictable, sustainable, and flexible core funding that is inclusive of all associated operational costs.

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Action Items

The following action items call on the Government of Canada, provinces and territories to collaborate with First Nations and their representative organizations to:

1. Pass standalone federal legislation for oversight, accountability, and data collection regarding First Nations peoples in the criminal justice system.
2. Create an independent First Nations Justice Auditor General (or equivalent type of office).
3. Establish independent oversight, reporting, and measuring of progress on government action on Indigenous justice, including implementation of existing strategies.
4. Ensure that recommendations from oversight mechanisms are binding on the Government of Canada federal governments with a 12-month time frame.



"Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State." – United Nations Declaration on the Rights of Indigenous Peoples Act, S.C. 2021, c. 14, s5



Evaluation

Ongoing evaluation and performance management of the FNJS is essential to determining its effectiveness. Quantitative data provides an impartial metric to understand the impact of policy changes. Qualitative data provides insight into the nuances of why some policy changes may be more effective than others.

Evaluation of the strategies and action items included in the FNJS should be carried out over intervals of five years with qualitative studies conducted to investigate specific aspects of the strategy to better understand issues, what types of interventions have been proposed, whether they are working, and make recommendations for new strategies and action items as needed.

Importantly, the effectiveness of the strategy must not be determined solely by a cost-benefit analysis. Many of the proposed recommendations to reform the criminal justice system and revitalize First Nations laws require significant investments and dedicated capacity funding. Without those investments it is difficult to assess effectiveness. One of the indicators could be investments by different levels of government.

Additionally, First Nations are at various levels of readiness and will be taking unique approaches that are distinct from the Canadian judicial system, and may be regionally or locally unique. Knowledge-sharing forums will be essential to conduct the qualitative study of both strategies and actions First Nations are advancing, as well as emerging or new justice priorities.

Performance monitoring should also be included in the strategy as a yearly exercise that is quantitative in nature. Analysis is needed to identify whether there are existing indicators being monitored through other processes that will help to assess the performance of policies and programs. New indicators will be proposed to help with this assessment and the federal government must provide data that is responsive to indicators directed by First Nations.

Data Principles

The FNJS respects all First Nations as an essential part of the circle. Where federal, provincial/territorial or regional government departments report on data collection, they should include statements to explain how certain aspects are defined for the purposes of the data (i.e. whether Indigenous self-identification is used, whether the data includes the on-reserve population, etc.). First Nations should be invited and encouraged to assess applicability and reliability of the data pertinent to themselves.

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Conclusion

The FNJS seeks to confront the overrepresentation and systemic discrimination faced by First Nations within the Canadian criminal justice system through two paths: revitalizing First Nations laws and traditional justice systems and reforming the existing Canadian justice system.

The development of this FNJS reflects years of AFN engagement with First Nations, and seeks to address the unique, intersectional challenges of First Nations women, girls, 2SLGBTQQIA+ people, men, and boys within the criminal justice system.

The FNJS also acknowledges the importance of creating and sustaining accessible First Nations justice services for First Nations people, regardless of where they may reside across Turtle Island.

The first path for this strategy, *Revitalization of First Nations Laws and Legal Systems*, involves finding collaborative paths forward through the gathering of knowledge from Elders and Knowledge Keepers and sharing wisdom between First Nations. It requires First Nations laws and legal structures to have authority and be enforceable, akin to an agency of the Canadian criminal justice system. The three themes explored in path one include returning to our laws, recognizing multiple jurisdictions, and protecting the land.

The second path, *Reforming the Criminal Justice System*, aims to comprehensively review and overhaul a colonial system that continues to perpetuate innumerable harms onto First Nations peoples. The four themes through which the current criminal justice system needs to be examined include: justice and wellness, policing and court reforms, corrections and parole reform, and legislative reforms.

Successful co-implementation of the FNJS requires a distinctions-based approach, collaborative relationships and accountability, as well as long-term and predictable funding. Due to the diversity of First Nations across Turtle Island, a distinctions-based approach that recognizes First Nations jurisdiction over criminal justice matters, self-determination, and autonomy in local and internal affairs is essential for both respect and implementation of unique First Nations traditions, history, forms of justice, cultures, identification, and ways of knowing. Accountability and collaboration, then, acts as a support in oversight and governance to advance the goals of the FNJS.

The FNJS is evergreen, allowing for adjustments and periodic updates over time as required, with evaluation mechanisms for regular oversight to reflect that need. In walking these two parallel paths, it is important to acknowledge the resilience and wisdom of our ancestors who continue to guide the way forward and walk alongside us.

We encourage all First Nations and members of Canadian society to join and engage with First Nations in this historic work.

